

1886

GOPAL
CHANDRA
LAHIRI
v.
SOLOMON.

(1) was cited to us as an authority in favor of extending the time ; but that case is no authority in favor of the respondent.

Even assuming the rules upon this subject in England to be the same as they are here, it will be found that in the case of the *Manchester Economic Building Society*, the fact which was made the ground for allowing the appeal after time, was one which the applicant was not, and could not, even by the exercise of due diligence, have been made aware of at the time when order was made which was sought to be appealed against.

I think that the appeal should be allowed, and the application for review dismissed with costs.

WILSON, J.—Upon the first question whether there were in this case grounds upon which a review could be granted, I express no opinion. If at a trial all parties, counsel on both sides, and the Judge are under a misapprehension as to the contents of a document, or even if the Judge alone is misled on such a point, and in consequence a wrong decree is made, I am disposed to think that the mistake ought to be corrected on review.

Upon the question whether there was sufficient cause for not applying within the time limited by law, I agree with the Chief Justice.

T. A. P.

Appeal allowed.

Attorney for the appellant : Mr. C. F. Pittar.

Attorney for the respondent : Messrs. Watkins & Co.

INSOLVENCY.

Before Mr. Justice Norris.

1886
March 3.

IN RE MAHOMED MAHMUD SHAH, AN INSOLVENT.

Insolvency—Interest on scheduled debts—Official Assignee's Commission on interest.

Where an insolvent's estate is sufficient to pay off his creditors in full, leaving a balance in the hands of the Official Assignee, the Court will direct interest at 6 per cent. to be paid on such proved or admitted contract debts as expressly or impliedly carry interest as from the date of the filing of the petition in insolvency ; and will allow the Official Assignee to retain his commission on such sum so paid as interest, directing any balance that may then remain in his hands, to be made over to the insolvent.

(1) L. R., 24 Ch. D., 488.

IN this case the Official Assignee applied to the Court for an order that he might be at liberty to pay and divide amongst the creditors of the estate of the insolvent, after proof of their debts, a dividend amounting to Rs. 100 per cent. in proportion to their respective debts and claims; and that he might further be at liberty to pay interest on such of the admitted claims as bore interest at such rate as the Court might direct, from the date of the filing of the petition of insolvency to the present application; and that he might be at liberty to retain his commission on the amount of such interest, and to pay over to the insolvent such balance as might remain due after making all such payments as aforesaid.

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MED SHAH.

The petitioner stated that the debts due from the estate amounted to Rs. 1,116-11-9; that there was then in his hands the sum of Rs. 12,106-12-11, belonging to the estate; that after payment of his commission and other charges there would remain in his hands the sum of Rs. 12,020-15-7, capable of being divided amongst the creditors of the estate; and that after payment of the scheduled creditors in full there would remain in his hands the sum of Rs. 10,904-3-10; he therefore asked for the order set out above.

The *Official Assignee* (Mr. J. C. MacGregor) appeared in person.

NORRIS, J.—In this case I think the surplus assets in the hands of the Official Assignee, after payment of the debts in full, ought to be applied in payment of interest at 6 per cent. on contract debts which expressly or impliedly carry interest; and that the Official Assignee should retain his commission of five per cent. on the amount of such interest. The balance then remaining in the hands of the Official Assignee should be paid to the insolvent.

T. A. P.

Order as prayed.

Before Mr. Justice Norris.

IN RE J. W. FOX, AN INSOLVENT.

1886
March 3.

Insolvency—Final discharge where insolvent is not personally present in Court—

Affidavit explaining absence—Opposition to final discharge.

An insolvent who has obtained a rule *nisi* for his final discharge, but who is not personally present in Court on the return of the rule, is entitled, where no one appears to oppose the rule, to have the rule made absolute on his putting in a sufficient affidavit explaining his absence.